

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,
Plaintiff,

v.

CIVIL ACTION NO. 3:17-01362

AMERISOURCEBERGEN
DRUG CORPORATION, et al.,
Defendants.

CABELL COUNTY COMMISSION,
Plaintiff,

v.

CIVIL ACTION NO. 3:17-01665

AMERISOURCEBERGEN
DRUG CORPORATION, et al.,
Defendants.

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants respectfully submit this Notice with respect to Plaintiffs' Motion to Strike Defendants Notices of Non-Party Fault (Dkt. 224) and state as follows:

1. Plaintiffs' Motion to Strike Defendants Notices of Non-Party Fault is currently pending before the Court. A similar motion was filed in the state court opioid litigation pending before the West Virginia Mass Litigation Panel ("the Panel").

2. Only July 29, 2020, Plaintiffs submitted, in a Notice of Supplemental Authority (Dkt. 813), a ruling by the Panel holding that W.Va. Code § 55-7-13d(a)(2) did not apply to the state court plaintiffs' public nuisance claims (the "Panel Ruling").

3. The purpose of this Notice is to inform the Court that on December 4, 2020, the Supreme Court of Appeals issued a Rule to Show Cause directing the state court plaintiffs to

show cause as to why a writ of prohibition should not issue with respect to the Panel Ruling. The issuance of the Rule to Show Cause has resulted in an automatic stay of the underlying litigation before the Panel, and the matter is set for oral argument on February 17, 2021 under Rule 20 of the West Virginia Rules of Appellate Procedure.

4. A copy of the state court defendants' Petition is attached hereto as Exhibit A. A copy of the state court plaintiffs' response is attached hereto as Exhibit B. And a copy of the Rule to Show Cause is attached hereto as Exhibit C.

Dated: December 8, 2020

Respectfully submitted,

/s/ Gretchen M. Callas
Gretchen M. Callas (WVSB #7136)
JACKSON KELLY PLLC
Post Office Box 553
Charleston, West Virginia 25322
Telephone: (304) 340-1000
Facsimile: (304) 340-1050
gcallas@jacksonkelly.com

Robert A. Nicholas
Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnicholas@reedsmith.com
smcclure@reedsmith.com
Counsel for AmerisourceBergen Drug Corporation

/s/ Jeffrey M Wakefield

Jeffrey M. Wakefield (WVSB #3894)
FLAHERTY SENSABAUGH BONASSO PLLC
P.O. Box 3843
Charleston, WV 25338-3843
Telephone: (304) 345-0200
jwakefield@flahertylegal.com

Mark H. Lynch
Christian J. Pistilli
Laura Flahive Wu
Megan A. Crowey
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Telephone (202) 662-6000
Counsel for McKesson Corporation

/s/Steven R. Ruby

Steven R. Ruby (WVSB #10752)
CARREY DOUGLAS KESSLER & RUE
901 Chase Tower, 707 Virginia Street East
P.O. Box 913
Charleston, WV 25323
Telephone: (304) 345-1234
Facsimile: (304) 342-1105
sruby@csdlawfirm.com

Enu Mainigi
F. Lane Heard III
Ashley W. Hardin, ahardin@wc.com
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
emainigi@wc.com
lheard@wc.com
Counsel for Cardinal Health, Inc.

CERTIFICATE OF SERVICE

I, Gretchen M. Callas, do hereby certify that service of the foregoing *Defendants' Notice of Supplemental Authority* was filed electronically via the CM/ECF electronic filing system and served on all counsel registered in the system.

Dated: December 8, 2020

/s/Gretchen M. Callas
Gretchen M. Callas (WVSB #7136)